

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 160571-U

NO. 4-16-0571

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 22, 2017
Carla Bender
4th District Appellate
Court, IL

| | | |
|----------------------|---|-------------------|
| DISCOVER BANK, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Champaign County |
| APRIL APPELATE, |) | No. 15SC1011 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Holly F. Clemons, |
| |) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly (1) conducted the small-claims hearing, and (2) entered judgment in favor of plaintiff.

¶ 2 In September 2015, plaintiff, Discover Bank (Discover), filed a small-claims complaint against defendant, April Applegate, for an unpaid credit card account balance of \$6607.96. Following a May 2016 bench trial, the trial court entered judgment in favor of plaintiff.

¶ 3 Defendant appeals, arguing (1) the complaint failed to plead sufficient facts to state a cause of action; (2) the trial court violated her rights to due process and equal protection by proceeding to a bench trial without adequately disposing of pretrial motions and orders; (3) the evidence was insufficient to support the judgment; and (4) the trial court abused its discretion

and violated her rights to due process and equal protection by making certain procedural rulings. For the following reasons, we affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5

In September 2015, plaintiff filed a small-claims complaint against defendant for an unpaid credit card account balance of \$6607.96. The complaint alleged defendant applied for a Discover Bank credit card account, made various purchases or cash advances on the account, and failed to pay for the purchases or cash advances. The complaint further alleged plaintiff exercised its right to accelerate the time for payment of the total amount due of \$6607.96. Attached to the complaint was a copy of the Discover Card account summary. Finally, the complaint alleged, "Although demand has been made upon [d]efendant to liquidate the balance due and owing, the [d]efendant has failed or refused to do so."

¶ 6

After getting leave to conduct discovery from the trial court, defendant filed a request for the production of documents. Defendant sought various documents, including the following: (1) "a copy of the executed contract *** setting forth the terms [d]efendant is alleged to have agreed to in connection with the alleged account at the beginning"; (2) copies of any modifications to the contract's terms agreed to by defendant; (3) an accounting of charges and payments; (4) a copy of the demand letter referenced in the complaint; (5) documentation clarifying the relationship between plaintiff and Weltman, Weinberg & Reis Co. LPA (plaintiff's attorney of record), "including a bona fide affidavit of assignment or other authorization to enter into the alleged contract between [plaintiff] and [d]efendant"; and (6) any documentation that the debt had been transferred from Discover Bank to any third party, and details regarding the manner of the transfer.

¶ 7 During a March 2016 status hearing, plaintiff's counsel expressed his belief that documents responding to the discovery requests had been sent to defendant. Defendant stated she had received nothing from plaintiff. Due to issues with discovery, the attorney for plaintiff suggested continuing the matter to "ferret out" the discovery problems. Defendant stated, "I object, Your Honor. I'd like to request that you dismiss this case with prejudice. This is the second time that the same case has been filed. The first time it was dismissed for want of prosecution and, instead of refile, the plaintiff sent me a letter saying that I had been found guilty in court and how much I owed them." The trial court granted defendant leave to file a motion to dismiss but indicated it would not proceed without a written motion on file. The court ordered plaintiff to resend the response to defendant's discovery request within 14 days of March 4, 2016.

¶ 8 At an April 1, 2016, status hearing, plaintiff's counsel stated he was told a package of discovery had been sent to defendant the day before. The trial court asked defendant if she wanted the case set for another status hearing so she had time to review the late discovery, and the following exchange occurred:

"THE DEFENDANT: Well, I'd like for it to be dismissed—

THE COURT: Well, at this point, if you want to file—

THE DEFENDANT: —for lack of prosecution.

THE COURT: Well, if you wish to file a motion, I'll be happy to take that up, but I can't do it on just an oral motion.

At this point—I'll set this for trial at this point so we don't have to linger on with this."

¶ 9 In May 2016, the trial court held a bench trial. Tamisha Sheridan, a team leader in the deceased account services department of Discover Financial Services, testified Discover Bank was a part of Discover Financial Services. Sheridan testified she reviewed defendant's account, which was opened in October 2004. According to Sheridan, defendant applied for a line of credit on the internet and Discover issued her a credit card. Sheridan testified the terms and conditions governing the use of the account were set forth in a card-member agreement sent with the credit card.

¶ 10 According to Sheridan, Discover advanced funds to pay for purchases or cash advances made by defendant. Discover received payments from defendant, applied the payments to her account, and sent her monthly statements. Sheridan testified the documents were kept and used in the ordinary course of business, and the internet application for the line of credit, the current card-member agreement, and the monthly statements were all introduced into evidence. According to Sheridan, the monthly statements showed defendant last made a payment on the credit card balance on May 28, 2013, leaving a balance of \$5930.13. Sheridan testified the final monthly statement was issued on March 2, 2014, and showed a balance of \$6607.96 due to no payments, late fees, and interest.

¶ 11 On cross-examination, Sheridan acknowledged the online application was not electronically signed and did not contain information regarding defendant's employment or income, although it did include her name, date of birth, social security number, and address. Sheridan also testified the current card-member agreement did not have defendant's signature on it. However, Sheridan went on to state, "There's never a signature line for a card[-]member agreement. Basically with the card[-]member agreement, it lays out the terms and conditions of your use of the card, so it's just showing you what your rights are."

¶ 12 Following Sheridan's testimony, defendant said she had "never seen this exhibit despite having requested it at least three different times," and she felt unable to respond in the available time. Plaintiff's counsel stated he had a delivery receipt showing the documents were delivered to defendant. The trial court offered defendant two options: "Either I can give you some time to review those documents and then we can try to get as much of this case in as we can this morning. Otherwise, if you wish to—with some time to review those documents, I'll set this matter over to another day." Defendant responded, "I don't believe those documents are going to be relevant to my defense, so I would just as soon proceed."

¶ 13 Defendant testified this claim had previously been filed as Champaign County case No. 14-SC-1022 and defendant did not receive a demand letter as required under the Fair Debt Collection Practices Act (Debt Collection Act) (15 U.S.C.A. § 1692 (West 2016)). The trial court sustained objections to testimony regarding the procedural history of case No. 14-SC-1022 and the procedural history of the present case. Defendant then submitted her request for production as an exhibit and testified it "request[ed] validation of the debt under the Fair Debt Collection Act [*sic*]." Defendant submitted a second exhibit, which consisted of the documents she received in discovery, including (1) the online application for the credit card, (2) the card-member agreement, and (3) copies of account summaries.

¶ 14 In making its ruling, the trial court noted defendant did not claim someone else made the charges or any type of fraud. Additionally, the court found defendant made some regular payments during the time she had the credit card. The court further stated as follows:

"Her defense primarily is violations of the Fair Credit Act [*sic*]. I don't believe that those—that that rises to the level of a defense in this case. I believe certainly that she—that Discover had sent a

card[-]member agreement to her, and every time she used that card, the credit card, that she had basically assented to that agreement. So I certainly believe at this juncture that the plaintiff has established their case by a preponderance of the evidence."

Finally, the court noted defendant's reliance on *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, 972 N.E.2d 1238. The court found *Razor Capital* was not instructive to the present situation, as it involved a motion to dismiss. Accordingly, the court entered a judgment in favor of plaintiff in the amount of \$6607.96 plus court costs.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues (1) the complaint failed to plead sufficient facts to state a cause of action; (2) the trial court violated her rights to due process and equal protection by proceeding to a bench trial without adequately disposing of pretrial motions and orders; (3) the evidence was insufficient to support the judgment; and (4) the trial court abused its discretion and violated her rights to due process and equal protection by making certain procedural rulings. For the following reasons, we affirm the trial court's judgment.

¶ 18 A. Motion To Dismiss

¶ 19 Defendant first contends the complaint failed to state a cause of action. Specifically, defendant argues the complaint failed to plead sufficient facts to bring the claim within the scope of a legally recognized cause of action.

¶ 20 We initially note defendant's argument on appeal is akin to a motion to dismiss for failure to state a claim pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). "A motion to dismiss under section 2-615 of the Code challenges

the legal sufficiency of a complaint, based on defects apparent on its face." *Salvi v. Village of Lake Zurich*, 2016 IL App (2d) 150249, ¶ 25, 66 N.E.3d 894. Ordinarily, we review *de novo* a trial court's decision to deny a section 2-615 motion to dismiss. *Country Mutual Insurance Co. v. D and M Tile, Inc.*, 394 Ill. App. 3d 729, 736, 916 N.E.2d 606, 611 (2009). However, for the following reasons we decline to address this claim.

¶ 21 In the instant case, defendant twice made an oral motion to dismiss the complaint. First, at the March 2016 hearing, defendant asked the trial court to dismiss the case with prejudice and indicated it had previously been dismissed for want of prosecution. Second, at the April 2016 hearing, defendant again asked the court to dismiss the case for want of prosecution. In response, the court gave defendant leave to file a written motion, stating it would be happy to consider a motion to dismiss but requiring defendant file a written motion. See *Porter v. Urbana-Champaign Sanitary District*, 237 Ill. App. 3d 296, 299-300, 604 N.E.2d 393, 395-96 (1992) (A defendant in a small-claims action may not file a section 2-615 motion to dismiss the complaint without prior leave of court.); see also Ill. S. Ct. R. 287(b) (eff. Aug. 1, 1992). However, defendant never filed a written motion to dismiss and the record shows defendant never raised, orally or in writing, her specific claims regarding the factual defects of the complaint that she now raises on appeal. "Issues not raised before the trial court are considered forfeited, and a party may not raise such issues for the first time on appeal." *McKinley Foundation at the University of Illinois v. Illinois Department of Labor*, 404 Ill. App. 3d 1115, 1120, 936 N.E.2d 708, 713 (2010). Accordingly, we conclude defendant has forfeited review of her claims regarding the sufficiency of the pleadings and we decline to address this argument.

¶ 22 B. Pretrial Motions

¶ 23 Defendant's second argument on appeal claims her constitutional rights to due process and equal protection were violated when the trial court ordered a bench trial before ruling on pretrial motions. First, defendant contends she submitted a discovery request to obtain information that would have allowed her to determine whether plaintiff had violated the Debt Collection Act (15 U.S.C.A. § 1692 (West 2016)). However, according to defendant, the trial court set the matter for a bench trial before plaintiff responded to defendant's discovery request, thereby depriving defendant of access to this information. Second, defendant contends the court violated defendant's rights to due process and equal protection by refusing to consider her oral motions to dismiss.

¶ 24 *1. Discovery Claims*

¶ 25 The record shows the trial court ordered plaintiff to respond to defendant's discovery request before the bench trial. Defendant at no point objected to the court setting the matter for a bench trial. At the bench trial, counsel for plaintiff indicated he had a delivery receipt confirming the delivery of the documents defendant requested. However, defendant claimed she had never seen some of the documents plaintiff relied on during the trial. The trial court was clearly concerned that defendant did not have an adequate opportunity to examine plaintiff's documents and offered her the opportunity to take the time to review plaintiff's materials. The court offered to give defendant time that day or to set the hearing over to another day entirely to ensure she had adequate time to review the materials. However, defendant rejected both options, indicating she did not think the documents were going to be relevant to her defense and asked to proceed. Defendant has procedurally defaulted this claim, as she rejected the opportunity to further examine the documents plaintiff relied on and asked to proceed with the trial. See *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶

33, 969 N.E.2d 359 ("The rule [of invited error or acquiescence] prohibits a party from requesting to proceed in one manner and then contending on appeal that the requested action was error.").

¶ 26 To the extent defendant argues the documents plaintiff produced were not responsive to defendant's discovery requests, we conclude defendant has failed to adequately support her argument with citation to authority under Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016). Defendant cites only two cases in support of her claims regarding discovery compliance: *Coppola v. Arrow Financial Services, LLC*, No. Civ. 3:02CV577, 2002 U.S. Dist. 2002 WL 32173704 (D. Conn 2002), and *Razor Capital*, 2012 IL App (2d) 110904, 972 N.E.2d 1238. *Coppola* is a written ruling on a motion to compel responses to interrogatories and requests for production in a federal district court case in which the plaintiff, a debtor, filed a claim against the defendant, a debt collector, alleging the defendant (1) acquired the plaintiff's debt owed to third party and (2) violated, in part, the Debt Collection Act (15 U.S.C.A. § 1692 (West 2016)) in undertaking to collect the debt. This is distinguishable from the present action, which involves plaintiff and a creditor, seeking to recover a debt. Moreover, a federal district court ruling on a motion to compel is not persuasive authority for defendant's argument that the trial court violated defendant's constitutional rights to due process and equal protection. *Razor Capital*, 2012 IL App (2d) 110904, 972 N.E.2d 1238 involved a section 2-615 motion to dismiss and has no relevance to defendant's arguments regarding her discovery requests.

¶ 27 Moreover, we note that defendant's arguments regarding the alleged discovery violations all center around her request for information she argues she is entitled to under the Debt Collection Act (15 U.S.C.A. § 1692 (West 2016)). Defendant contends this information, such as documentation regarding a third party who acquired the debt, is necessary for the

purposes of "verifying" or "validating" the debt. However, this ignores the fact that Discover, the named plaintiff in this action, was the original creditor and not a debt collector to whom the Debt Collection Act applies. See *Cooper v. Pressler & Pressler, LLP*, 912 F. Supp. 2d 178, 184 (D.N.J. 2012) ("The law is clear that [the Debt Collection Act] only applies to 'debt collectors' as that term is defined by the [Debt Collection] Act."). Indeed, defendant cites no case law where a violation of the Debt Collection Act was raised as a defense rather than as a cause of action. Because plaintiff is a creditor who is "not subject to the [Debt Collection Act] when collecting [its] accounts" (*Stafford v. Cross Country Bank*, 262 F. Supp. 2d 776, 794 (W.D.K.Y. 2003)), any alleged noncompliance with defendant's discovery requests under the Debt Collection Act is irrelevant to this case.

¶ 28

2. Motions To Dismiss

¶ 29

We note defendant cites case law governing motions to dismiss under section 2-615 of the Code, which we have already determined defendant forfeited by failing to file a written motion to dismiss as directed by the trial court. However, defendant cites no authority for the proposition that the court violated her constitutional rights by requiring her to file a written motion. Accordingly, we conclude defendant has failed to adequately support her argument with citations to relevant authority. Contentions that lack citations of authority do not meet the requirements of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2017). See *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 522 (2001). This court is entitled to have pertinent authority cited and is not a repository into which an appellant may dump the burden of research. *Id.* We acknowledge defendant is proceeding without the benefit of counsel, but that does not relieve her of the obligation to follow Illinois Supreme Court Rules. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78, 987 N.E.2d 1.

¶ 30

C. Sufficiency of the Evidence

¶ 31 Defendant argues (1) the trial court should not have allowed Sheridan's hearsay testimony or admitted plaintiff's exhibits into evidence; (2) no evidence linked defendant to the contract at issue; (3) no evidence showed defendant accepted changes to the terms of the contract; and (4) the evidence did not verify the amount of the debt owed. Plaintiff contends the evidence was sufficient to support a judgment in its favor on its breach-of-contract claim.

¶ 32 In a bench trial, the trial court, as the finder of fact, is in a superior position to judge the credibility of witnesses and determine the weight their testimony should be given. *Vician v. Vician*, 2016 IL App (2d) 160022, ¶ 27, 64 N.E.3d 159. We will not substitute our judgment for the judgment of the trial court unless the judgment is against the manifest weight of the evidence. *Diocese of Quincy v. Episcopal Church*, 2014 IL App (4th) 130901, ¶ 38, 14 N.E.3d 1245. A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or if it is arbitrary, unreasonable, or not based on the evidence. *Id.* "In other words, if the record contains evidence to support the trial court's judgment, that judgment should be affirmed." *Vician*, 2016 IL App (2d) 160022, ¶ 27, 64 N.E.3d 159.

¶ 33 To prevail on a breach-of-contract claim, the plaintiff must prove "the existence of a valid and enforceable contract, performance by the plaintiff, breach of the contract by the defendant, and resultant damages or injury to the plaintiff." *Razor Capital*, 2012 IL App (2d) 110904, ¶ 30, 972 N.E.2d 1238. The issuance of a credit card is merely an offer to extend credit and a cardholder accepts the terms of the cardholder agreement through the use of the credit card. *Garber v. Harris Trust & Savings Bank*, 104 Ill. App. 3d 675, 678, 432 N.E.2d 1309, 1311 (1982). "[A] separate contract is created each time the [credit] card is used according to the terms of the cardholder agreement at the time of such use." *Id.* The terms of the cardholder

agreement the defendant allegedly breached must be shown and tied to the defendant. *Razor Capital*, 2012 IL App (2d) 110904, ¶ 33, 972 N.E.2d 1238. The terms are tied to a defendant by proving the terms were communicated to the defendant and the defendant accepted the terms by using the credit card. *Id.* ¶ 32.

¶ 34 During the bench trial, Sheridan testified she reviewed documents related to defendant's account and further testified (1) defendant applied for a credit card in 2004, (2) the card-member agreement was sent to defendant, and (3) defendant was sent monthly statements. Sheridan testified the documents in plaintiff's exhibits 1 through 3—including defendant's application, the card-member agreement, and defendant's monthly statements—were created and used in the ordinary course of business. The application contains defendant's name, date of birth, social security number, and address, and the monthly statements include defendant's name and address, the balance on the account, payment information, and instructions to refer to the card-member agreement for the full terms of the account. This evidence is sufficient to establish defendant used the credit account, accepted the terms of the card-member agreement, and breached those terms by failing to pay the balance of the account.

¶ 35 Defendant argues Sheridan's testimony and plaintiff's exhibits with the application, card-member agreement, and monthly statements should not have been admitted. A trial court's evidentiary rulings will be reversed only if the court abused its discretion. *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 121, 987 N.E.2d 971. We first note the evidentiary standards are relaxed under Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992), which provides that all relevant evidence is admissible in small-claims cases. Clearly this evidence was relevant and, therefore, admissible under Rule 286(b). However, the exhibits were also admissible under Illinois Supreme Court Rule 236 (eff. Aug. 1, 1992), which provides for the

admission of business records as an exception to the hearsay rule, and Sheridan's testimony laid a proper foundation for the admission of these documents. See *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 23, 10 N.E.3d 339.

¶ 36 Finally, defendant argues no evidence verified the amount of the debt because there was no documentation setting forth the interest rate or late fees allowed or a "complete history setting forth all credits and debits." Defendant does not discuss the monthly statements or Sheridan's testimony that (1) the statements show defendant's last payment was made in May 2013; and (2) the final monthly statement was issued on March 2, 2014, and showed a balance of \$6607.96 due to no payments, late fees, and interest. Given that evidence, we find defendant's argument unpersuasive. Moreover, defendant cites no relevant case law regarding the calculation of the amount owed. Accordingly, we conclude the trial court's judgment was supported by sufficient evidence to find in favor of plaintiff and award judgment in the amount of \$6607.96.

¶ 37 D. Procedural Issues

¶ 38 Finally, defendant argues the trial court abused its discretion in ruling on various procedural issues and thereby violated defendant's rights to due process and equal protection. This portion of defendant's brief engages in a lengthy discussion regarding nation-wide debt collection litigation. Defendant's brief then renews issues we have already addressed, including (1) the trial court's refusal to address her oral motions to dismiss, (2) the court's handling of her discovery requests and plaintiff's responses to those requests, and (3) the court proceeding to a bench trial before determining plaintiff complied with the discovery requests. We decline to further address these arguments.

¶ 39 Defendant also contends the trial court erred by proceeding under Illinois Supreme Court Rules 281 through 289, which apply to small claims. Specifically, defendant contends the trial court misapplied Rule 286(b) (eff. Aug. 1, 1992), which provides for an informal hearing where "all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence." Defendant asserts this rule is supposed to benefit "legally unsophisticated individuals" and not "bottom-feeding lawyers." However, Rule 286(b) applies to "any small claims case" and makes no distinction based on the legal sophistication of the parties. (Emphasis added.) Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992). We further note both cases defendant cites address Rule 286(a), which eliminates the need to file a written answer in small claims unless ordered to do so by the court. *Darwin Co. v. Sweeney*, 110 Ill. App. 3d 331, 332, 442 N.E.2d 318, 320 (1982); see also *Wroclawski v. Waszczyk*, 35 Ill. App. 3d 408, 411-12, 342 N.E.2d 261, 264 (1976). Therefore, these cases are unpersuasive as they do not address the provision of the rules which allows for informal hearings. We conclude the trial court did not err by proceeding under Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992).

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the trial court's judgment.

¶ 42 Affirmed.